

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 10015 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgment?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

P D GUJARATI LEGAL SECRETARY &R.L.A.

Versus

UNION OF INDIA MINISTRY OF FINANCE

Appearance:

MR PR NANAVALI for the Petitioner.
MR DN PATEL for Respondents No. 1-2
Ms.Harsha Devani, Assistant GOVERNMENT PLEADER,
for Respondent No. 3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/02/2002

ORAL JUDGEMENT

Rule returnable today. Mr.D.N. Patel and
Ms.Harsha Devani waive service of rule on behalf of the
respective respondents.

The petitioner, who is discharging his duty as
Legal Secretary and R.L.A. in the Legal Department of
the State of Gujarat, has filed this petition with a
prayer to quash and set aside letter / communication
dated 6th September, 2001 addressed to him by one Mr.T.

Thomas, who is Senior Resident Audit Officer.

The wife of the petitioner suffered fracture on 18.2.2000 and she was subsequently admitted to Shreyas Orthopaedic Hospital, wherein she was treated. The petitioner had to incur about Rs.23,959/- towards medical treatment. The petitioner thereafter sent the bill to the concerned Department for reimbursement of the said amount. The same was also granted by the Department as a special case under Rule 14(ii) of AIS (M.A.) Rules, 1954. It is not in dispute that the petitioner has received the said amount. However, subsequently, the aforesaid Senior Resident Audit Officer, addressed a letter dated 6th September, 2001, to the petitioner, asking the petitioner to give certain particulars, as desired by him in the said letter. The author of the letter was of the opinion that the petitioner could not have taken the treatment of his wife at a distant place in a private hospital without first approaching V.S. Hospital.

In my view, considering the emergency, if the wife of the petitioner was admitted in a private hospital, the petitioner cannot be denied the said just claim. Even the State has also rightly sanctioned the said amount treating the same as a special case. In that view of the matter, the aforesaid communication, in my view, requires to be quashed. However, in the affidavit-in-reply, which is filed by the Deputy Accountant General (Works), it is stated in paragraphs 6 and 7 as under :-

"

6. I say that the petition is premature as "order" dated 6.9.2001 which has been challenged is not actually an order as audit has no jurisdiction to "order" any action directly against a departmental employee which it is auditing. It can at last be called advise, opinion or objection but not an order. Even an audit objection, the ultimate decision and responsibility of taking a particular course of action rests with executive, in this case State Govt and State Government has not yet initiated action for recovery against the petitioner.

7. The letter dated 6.9.2001 arose after first audit objection on the subject

was issued dated 14.6.2001 to P.A.O. i.e. the office scrutinising and passing the bills (Annexure I) when the RAO was scrutinising the medical reimbursement bills of the petitioner. The PAO forwarded the audit objection in verbatim to the petitioner who sent a reply to the points raised by audit. Not satisfied with the reply as still there were many unanswered questions RAO further asked for clarification on certain issues. However the concerned Audit Officer has been advised not to enter into direct correspondence with individuals concerned even for seeking information/clarification but only through the office who is responsible for making payment/processing the case. Also the audit objection was at preliminary stage and far away from appearing in the C&AG's Audit Report for State.

... .."

In view of the affidavit-in-reply, it is clear that the said communication was not required to be addressed to the present petitioner and, therefore, whatever letter is written, it seems to have been written by oversight. In view of the aforesaid averments in paragraphs 6 and 7, now, it is not necessary to quash the aforesaid communication at Annexure 'A', as now, it is not required to be given any effect. The matter now should be treated to have been closed so far as the present controversy is concerned so that the petitioner may not have to approach the Court once again for this very issue.

Mr.D.N. Patel, appearing for the Audit Department, has also fairly stated that the concerned Officer, by mistake, wrote the aforesaid letter, as he was not required to enter into direct correspondence with the petitioner.

Considering the totality of the case and considering the fact that in view of the emergency, the petitioner's wife was required to be taken to the private Hospital, in my view, it is not a case in which any objection was required to be taken by the Audit Department. In the facts and circumstances of the case and in view of the averments at paragraphs 6 and 7 of the affidavit-in-reply, nothing further is required to be done in the matter as, admittedly, no order against the petitioner is passed and in view of what is stated above,

even no order is likely to be passed against the petitioner.

In the above view of the matter, the petition is disposed of. Rule is discharged with no order as to costs.

Liberty to apply in case of any difficulty.

20th February, 2002 (P.B. Majmudar, J.)

(apj)